

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

FALCON HELICOPTER, INC., et al.,)	
)	
Plaintiffs,)	Case No. 10-00749-CV-W-DGK
)	
v.)	
)	
M.D. HELICOPTERS, INC., et al.,)	
)	
Defendants.)	

ORDER

Pending before the Court is the Plaintiffs Falcon Helicopter, Inc., Lee's Summit Turbines, Inc., and Robert A. Schlotzhauer's Motion to dismiss without prejudice and Suggestions in Support. Docs. 32-33. The Court has considered this Motion in conjunction with the Defendant Rolls-Royce Corporation's Suggestions in Oppositions and the Plaintiffs' Reply. Docs. 35, 38. Co-Defendant M.D. Helicopters, Inc. ("MDHI") has filed no response and the Plaintiffs assert that it has consented to dismissal without prejudice. For the reasons discussed below, the Plaintiffs' Motion is DENIED.

Discussion

Rolls-Royce requests dismissal *with* prejudice, arguing that issues in this case have already been adjudicated twice—once in a state court action and once in a federal criminal case. While the Court expresses no view on merits of these arguments, is it clear that the Court may not, in the face of a request for dismissal *without* prejudice, dismiss a case *with* prejudice without notifying the Plaintiffs and allowing them a chance to withdraw their motion and proceed with the litigation. *Jaramillo v. Burkhardt*, 59 F.3d 78, 79 (8th Cir. 1995). In this situation, dismissal without the stipulation of all parties is only available "on terms that the court considers proper."

Fed. R. Civ. P. 41(a)(2). The Court finds that dismissal without prejudice would prejudice the objecting defendant, exposing it to the possibility of a future lawsuit and the accompanying legal fees. The Plaintiffs' Motion is therefore DENIED.

IT IS SO ORDERED

Dated: February 9, 2011

/s/ Greg Kays
GREG KAYS,
UNITED STATES DISTRICT COURT